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IN THE SUPREME COURT

OF

THE UNITED STATES OF AMERICA

CHARLIE YOUNG, JR.,	)	
	)	
Petitioner	)	October Term, 1983
	)	
vs.	)	
	)	
THE STATE OF GEORGIA,	)	Case No._____
	)	
Respondent	)	

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF GEORGIA

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QUESTIONS PRESENTED FOR REVIEW

I. Can the State of Georgia, consistently with the Double Jeopardy Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment, try petitioner for murder and sentence him to death a second time under Georgia's death penalty law, after he has been previously tried, convicted, and sentenced to death for the same offense on the basis of the same statutory aggravating circumstances, and after a federal district court has ruled, in his habeas corpus case under 28 U.S.C. §2254, that the evidence presented at his first trial was insufficient to support the jury's finding of the statutory aggravating circumstances relied upon by the state beyond a reasonable doubt, and such district court ruling was not disturbed on appeal?

II. Can the State of Georgia, consistently with the Double Jeopardy Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment, try petitioner for murder and sentence him to death a second time under Georgia's death penalty law, on the basis of a statutory aggravating circumstance not submitted to the jury at his first trial?

III. Did the Supreme Court of Georgia misinterpret and misapply the decision of the United States Court of Appeals in Young v. Zant, 677 F.2d 792 (11th Cir. 1982)?

PARTIES INVOLVED IN THIS LITIGATION

The only parties involved in this litigation are Charlie Young, Jr., and the State of Georgia. However, a special prosecutor is participating in the case on behalf of the Farmers Bank of Union Point, Georgia.

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CITATION TO OPINION BELOW

The judgment and opinion of the Supreme Court of Georgia in this case is reported at 251 Ga. 153, 251 GLR 114 (1983), and is set out in Appendix A to this petition. (See pp. A-1 - A-4).

STATEMENT OF JURISDICTION

The court has jurisdiction over this petition for Writ of Certiorari under 28 U.S.C. §1257(3). The judgment of the Supreme Court of Georgia was entered May 25th, 1983. A Motion for Rehearing was filed and an Order was entered denying such motion on July 7th, 1983. A copy of this Order denying rehearing is set out in Appendix A to this petition. (See p. A-5).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States, which provides:

> "... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; ...."

and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, which provides:

> "... nor shall any state deprive any person of life, liberty, or property, without due process of law; ...."

2. This case involves Ga. Code Ann. §27-2534.1(b)(2) (now O.C.G.A. §17-10-30(b)(2)), which provides:

> "(b) In all cases of other offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his

instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating circumstances which may be supported by the evidence:

(2) The offense of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony or aggravated battery, or the offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree;"

3. This case involves Ga. Code Ann. §27-2534.1(b)(4) (now O.C.G.A. §17-10-30(b)(4)),which provides:

"(b) In all cases of other offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating circumstances which may be supported by the evidence:

(4) The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value."

4. This case involves Ga. Code Ann. §27-2534.1(b)(7) (now O.C.G.A. §17-10-30(b)(7)),which provides:

"(b) In all cases of other offenses for which the death penalty may be authorized, the judge

shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating circumstances which may be supported by the evidence:

(7) The offense of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible, or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim;"

STATEMENT OF THE CASE

A. The case in the State Court system and on direct appeal. On December 15th, 1975, Reuben H. Flynt, Vice President of the Farmers Bank of Union Point, Georgia, was killed at his home. Police investigation revealed that the petitioner, Charlie Young, Jr.[1], and his nephew, Derwin Young, had driven from Atlanta to Union Point on the morning of December 15th, 1975, so that petitioner could discuss with Mr. Flynt certain notices he had received from the bank concerning delinquencies in his payment of loans. Petitioner drove to the bank, to Mr. Flynt's house, and then back to the bank and to Mr. Flynt's house again before locating Flynt's car. Petitioner went to the door of Flynt's house and rang the doorbell, but was rebuffed by Flynt who told him to come see him at the bank in thirty minutes. Appellant then returned to the car, got a .22 caliber pistol, and returned to Flynt's house where he asked to use the telephone to call his grandmother. After trying unsuccessfully to reach his grandmother, petitioner again tried

[1] Petitioner, a young black man, has been described as "articulate" and "college-trained." He once received a job recommendation from the Sheriff of Greene County. See Young v. Ricketts, 242 Ga. 559, 560-61.

to talk with Flynt concerning the outstanding loans. An argument ensued, Young and Flynt struggled, and Young shot Flynt several times with the pistol at close range. Petitioner was slightly injured in the altercation. Petitioner then ripped the telephone from the wall, took Flynt's wallet from his rear pocket, and left.

Petitioner and his nephew drove back to the bank. Petitioner then gave his nephew the wallet, and told him to go into the bank and give it to Mr. Stewart (the President of the bank) and to get $60,000. Derwin Young subsequently entered the bank, approached a teller, handed her the billfold, and said, "The man that gave me this billfold said for you to give me $60,000 or he will kill Reuben Flynt in fifteen minutes." The President of the bank directed the teller to comply, and she placed approximately $10,000 in a bag and gave it to Derwin Young. Meanwhile, the police had been alerted, and Derwin Young was arrested upon leaving the bank. The petitioner was not seen at the bank, but was later found at his grandmother's house, where he was arrested. A .22 caliber pistol was discovered beneath the driver's seat of the car he had been driving. Bullets later removed from the victim's body were determined to have been fired from this pistol. The victim died from loss of blood due to the gunshot wounds and several lacerations on his head, which were inflicted by the petitioner with the butt of the gun during the struggle.

After he was arrested and advised of his Miranda rights, petitioner gave a statement recounting the events of December 15th, 1975. Petitioner admitted struggling with Flynt, striking him, and shooting him with the pistol, but denied that he had gone to Flynt's house for the purpose of robbing him. Petitioner instead maintained that he had not decided to attempt to obtain money from the bank by the use of Flynt's wallet until after the

fatal altercation had occurred. Petitioner also gave consent for the police to search the automobile, and it was after this consent was given that the police found the pistol underneath the seat of the car.

Petitioner was tried and convicted of murder, armed robbery, and robbery by intimidation in the Superior Court of Greene County as a result of the events of December 15th, 1975. He was sentenced to death for murder, to life imprisonment for armed robbery, and to twenty years' imprisonment for robbery by intimidation. The aggravating circumstances relied upon by the State in seeking the death penalty were Ga. Code Ann. §27-2534.1(b)(2) (now O.C.G.A. §17-10-30(b)(2)) (that the murder was committed during the course of an armed robbery), and §27-2534.1(b)(4) (now O.C.G.A. §17-10-30(b)(4)) (that the murder was committed for the purpose of obtaining money).

Petitioner appealed these convictions to the Supreme Court of Georgia, contending, among other things, that the aggravating circumstances had not been proved beyond a reasonable doubt. The Supreme Court of Georgia affirmed the convictions and the death sentence. Young v. The State, 237 Ga. 852, 230 S.E.2d 287 (1976). A copy of this opinion is included in Appendix A to this petition. (See pp. A-6-A-11).

Petitioner subsequently filed a petition for writ of habeas corpus in the State Court system, challenging the effectiveness of his trial counsel. This petition was denied, and the Supreme Court of Georgia affirmed. Young v. Ricketts, 242 Ga. 559, 250 S.E.2d 404 (1978), cert. denied, 442 U.S. 934, 99 S.Ct. 2870, 61 L.E.2d 304 (1979).

B. The case in the federal court system. Petitioner then initiated a habeas corpus proceeding in the United States District Court for the Middle District of Georgia, claiming that his trial counsel had been ineffective at both stages of his

bifurcated trial, and that the evidence was insufficient to support the jury's finding of aggravating circumstances. The District Court set aside the death sentence, ruling that petitioner received ineffective assistance of counsel during the sentencing phase of his trial. As an additional ground for its ruling, the District Court found that the evidence presented at petitioner's trial was "... not legally sufficient to support the jury's finding beyond a reasonable doubt that the murder was committed in the course of an armed robbery or for the purpose of obtaining money." Young v. Zant, 506 F.Supp. 274, 280 (M.D. Ga. 1980). A copy of the District Court's order and opinion is attached as a part of Appendix A to this petition. (See, pp. A-12- A-19). The District Court explained its ruling as follows:

> Petitioner also asserts as a basis for habeas corpus relief that the evidence at trial did not support the jury's finding of statutory aggravating circumstances contained in Ga. Code Ann. §27-2534.1(b)(2), that the murder was committed during the course of an armed robbery, and §27-2534.1(b)(4), that the murder was committed for the purpose of obtaining money. Having carefully considered all the evidence presented at trial, the court finds that the evidence was not legally sufficient to support the jury's finding beyond a reasonable doubt that the murder was committed in the course of an armed robbery or for the purpose of obtaining money. The only relevant evidence presented at trial indicated that petitioner did not contemplate the taking of any money until after the shots had been fired and the blows had been struck, i.e., after the murder had been committed. See, testimony of F.B.I. Agent Kane, Trial Transcript, pp. 372-373. Based on the evidence presented at trial that petitioner prior to the commission

> of the murder had any intent to rob the victim is only speculation. Certainly the evidence does not prove these aggravating factors beyond a reasonable doubt. Considering the evidence in this case and the plain language of Ga. Code Ann. §27-2534.1(b)(2) and (4), the removal of the victim's wallet and the attempt to obtain money from the bank cannot be considered as aggravating factors of the already committed murder. Petitioner was therefore sentenced to death based on an improper finding of aggravating circumstances, and for this reason must be resentenced. 506 F.Supp. 280-81. (Emphasis original)

The District Court denied relief as to the guilt or innocence phase of petitioner's trial, rejecting petitioner's claims that he was not afforded effective assistance of counsel during that phase of the proceedings in the Superior Court of Greene County.

The State of Georgia subsequently appealed the District Court's ruling ordering a new sentencing trial to the United States Court of Appeals for the Eleventh Circuit. Petitioner cross-appealed from the District Court's denial of relief as to the guilt or innocence phase of the trial. On May 14th, 1982, the Eleventh Circuit issued an opinion reversing the District Court's denial of the writ of habeas corpus with respect to the guilt or innocence phase of the trial. Young v. Zant, 677 F.2d 792, 800 (11th Cir. 1982). A copy of the opinion of the Eleventh Circuit is attached as a part of Appendix A to this petition. (See, pp. A-20- A-28).

The Court of Appeals recognized that the District Court had found, as an alternative ground for reversal of the death sentence, that the evidence was insufficient to support the finding of the two aggravating circumstances relied upon by the State:

The District Court concluded that the undisputed evidence showed that Flynt was completely incapacitated before Young formed the intent to rob him. Thus, the Court reasoned, the State had failed to prove that any of the essential elements of armed robbery, the taking of property from a person "by use of an offensive weapon" Ga. Code Ann. §26-1902 occurred prior to the assault; nor had it shown that Young's purpose in assaulting Flynt was to obtain money. 677 F.2d at p.794, n.3.

The Court of Appeals made no other references to the portions of the District Court's order regarding the sentencing phase of petitioner's trial, with one exception. In reviewing the District Court's ruling that petitioner had received effective assistance of counsel at the guilt or innocence phase of his trial, the Court of Appeals noted:

> (T)he District Court, in assessing the sufficiency of the State's evidence of aggravating circumstances on the malice murder charge, concluded that the State did not produce sufficient evidence to permit the jury to find beyond a reasonable doubt that Young had formed the intent to rob Flynt prior to the fatal assault. Young v. Zant, 506 F.Sup. at 280-81. This deficiency in the evidence should have been sufficiently clear to trial counsel to suggest a strong argument that Young did not rob Flynt by the use of an offensive weapon and thus could not be guilty of armed robbery under Ga. Code Ann. §26-19-02. 677 F.2d at p.799

In this connection, the Court of Appeals also observed:

> Curiously, the District Court did not discuss the legal effect of Flynt's incapacity, and therefore Young's taking without "use of an offensive weapon" on the validity of Young's conviction for armed robbery. This